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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALLISON KAY GRAHAM,

Defendant and Appellant.

E056647

(Super.Ct.No. FBA 900706)

OPINION

APPEAL from the Superior Court of San Bernardino County. Miriam Ivy Morton, Judge. Affirmed.

Sylvia Whatley Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Allison Kay Graham is serving 15 years in prison after pleading guilty to reduced charges for shooting at a group of people who were standing in front of a

house. In this appeal, defendant seeks a total \$80 reduction in her fines based on ex post facto principles. We conclude that defendant waived this argument by failing to raise it in the trial court.

FACTS AND PROCEDURE

In the early morning hours of November 15, 2009, defendant struck a woman in the head with her fist at a nightclub. Defendant then went to the woman's house and struck her again, before leaving in her car and telling another person at the home "I got a bullet for you." Defendant returned to the woman's house and, from her car, fired eight to twelve shots from a .40 caliber semi-automatic handgun at the woman, her parents and several family members who were gathered in the front yard of the home.

On February 2, 2010, the People filed an information charging defendant with seven counts of attempted premeditated murder (Pen. Code, §§ 664/187, subd. (a), 189.)¹ The People alleged as to each count that defendant personally used a firearm (§ 12022.53, subd. (c)).

On March 9, 2012, defendant pled guilty to assault with a firearm (§ 245, subd. (a)(2)) and assault by means of force likely to result in great bodily injury (former § 245, subd. (a)(1)). Defendant admitted an allegation that she personally used a firearm (§ 12022.5, subd. (a)).

On May 7, 2012, the trial court sentenced defendant to 15 years in prison. The trial court imposed a restitution fine of \$240. The court imposed a parole revocation fine

¹ All section references are to the Penal Code unless otherwise indicated.

of \$240, but suspended it pending successful completion of parole. This appeal followed. Defendant obtained a certificate of probable cause.

DISCUSSION

When defendant committed her crimes in 2009, the minimum restitution fine under section 1202.4, subdivision (b), was \$200. The minimum parole revocation fine under section 1202.45, subdivision (a), is set at “the same amount as that imposed pursuant to subdivision (b) of Section 1202.4.” Section 1202.4 was amended effective January 1, 2012, and the minimum fines were increased to \$240. (Stats. 2011, ch. 358, § 1) Defendant asserts that the trial court intended to impose the minimum restitution and parole revocation fines, but mistakenly used the amounts in effect in 2012 rather than in 2009. She contends that this court must reduce the amounts to \$200 each to reflect the statutory minimum in effect at the time of the crimes.

Defendant raised no objection in the trial court to the amount of the fines. The \$240 fines were not an unauthorized sentence. While the prohibition against ex post facto laws applies to restitution fines (*People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1248), the trial court could have imposed a \$240 restitution fine and a \$240 parole revocation fine in 2012, because the fines in effect in 2009 were from \$200 to \$10,000. Thus, this was not an unauthorized sentence, which is a sentence that could not lawfully be imposed under any circumstances in the particular case. (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1218.) Because of this, defendant forfeited her objection to the amounts by failing to raise the issue in the trial court. (*Garcia*, at p. 1218.)

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

MILLER

J.